



Organization for Security and Co-operation in Europe

Mission to Croatia

Headquarters

30 July 2004

Background Report on the Return of Illegally Occupied Residential Properties

Introduction

Under a 1995 Law, more than 19,000 private properties of Croatian Serb refugees and internally displaced persons (IDPs), primarily in the former Serb-controlled areas, were taken over by the Croatian State in order to provide housing to Bosnian Croat refugees, Croatian IDPs and Croat settlers from areas which had not been affected by the war. The continued occupancy of these properties has remained an obstacle to return over the years, with rule of law ramifications regarding lack of access to property. Since 2001, the Croatian Government has committed itself several times to the restitution of the remaining occupied LTTP properties. Following the November 2003 elections, the new Government gave tangible meaning to these commitments with the December 2003 *Agreement on Co-operation between the Future Government of the Republic of Croatia and the Representatives of the Serb Independent Democratic Party in the Croatian Parliament* (Agreement). This agreement stipulates two deadlines for the restitution of the private properties still occupied: 30 June for the illegally occupied properties and 31 December for all the remaining occupied properties¹.

This Report pertains primarily to the fulfillment of the 30 June for the return of illegally occupied private properties to their owners as well as the impact of property repossession on the sustainable return of minority refugees and internally displaced persons (IDPs).

The main findings of the Report are:

- The Government has resolved most of the pending illegal (LTTP) occupancy cases by the 30 June deadline.
- The Government's actions in the last six months continued to be constrained by the self-imposed condition to provide alternative housing for occupants as a prerequisite for repossession by the owners. In a significant number of cases and for a variety of reasons, these activities resulted in regularizing the legal status of

¹ These properties were allocated by the State for use by *temporary users* under the 1995 Law on Temporary Take-Over and Administration of Specified Properties (LTTP). Occupants who were given access to housing under this Law fall under 4 main categories: a) occupants who still have State permission to use the properties but are now being provided with alternative housing; b) occupants whose private houses have meanwhile been reconstructed by the State and who should therefore leave the property; c) occupants whose decision on temporary use has been cancelled and who did not leave the property, despite being ordered to do so by the Ministry; d) occupants who received alternative housing from the Ministry but still refuse to vacate the property. Finally there is a category of illegal occupants of private property who never had a valid administrative decision to occupy that property. While the Government declines responsibility for illegally occupied properties which were not allocated under the 1995 Law, it has intensified its efforts regarding the return of illegally occupied properties which were allocated for temporary use by the State (LTTP properties).

the occupant in the private property of the owner, rather than physical repossession. As a result of this, there is a weak correlation between repossession and return.²

- A significant proportion of the repossessed properties are looted by the occupants, and integral parts of houses are removed prior to their vacation. This often consigns the owners to a prolonged period of displacement after formal repossession.

1) Illegal occupancy cases

The Government resolved the bulk of the pending illegal occupancy cases by 30 June, as foreseen in the Agreement. Of 523 such cases pending at the beginning of 2004, 55 remain unresolved (this does not include cases which became illegal occupancy in the interim). This was achieved thanks to the extensive engagement of the Commission for Expellees, Refugees, and the Return of Property (Commission), which was established on 12 March with the specific task of coordinating the work of the State administration with regard to all property repossession and reconstruction. The Commission has held five plenary sessions so far and produced two reports for the Government. In addition, the President of the Commission has extensively toured counties and municipalities with a particularly high number of repossession cases.

Field reports show that cases were often resolved through extensive pressure on illegal occupants, to either move out of the occupied property to avoid court proceedings being initiated against them, or to avoid the execution of forceful evictions in cases where courts had already ruled in favour of the owner. This pressure was exercised by local representatives of the Ministry for Maritime Affairs, Tourism, Transport and Development (Ministry) in conjunction with other ministries such as the Ministry of Defence and the Ministry of Family, Inter-Generation Solidarity and War Veterans, which provided housing to certain categories of occupants (active members of the armed forces, war veterans and socially vulnerable individuals). Several illegal occupants obtained alternative housing from the Ministry although they were not entitled to this housing by law. This policy shift was announced by the Prime Minister and other senior members of Government, who gave public assurances to temporary users that nobody would be evicted onto the street.

In addition, many owners were the subject of persuasion by the State-owned Agency for Real Estate Transaction (APN) to sell their property, which is then used as alternative housing (*housing care*) for occupants. The Government has intensified the purchase of residential houses from Croatian Serb citizens in municipalities with a high number of illegal occupancy cases. As a rule, these are also municipalities with a high return rate. Measures used include raising the offered price above market level, and public invitations to owners to put their houses on sale. In many cases, the houses purchased were inhabited by temporary occupants, who were able to remain in the houses as lessees after they were purchased by the State.

² The reasons include: long periods of displacement with no access to the property (between eight and twelve years); changes in the ethnic balance in many municipalities in which Serbs were previously the majority, or were at least a compact ethnic community; lack of jobs and poor economic prospects, in particular for members of the Serb minority; integration in the country of refuge (primarily of relevance to younger persons and families with children); and the unequal bargaining position of owners of occupied properties in contract negotiations with the authorities.

Another means used to resolve cases of occupied properties is the conclusion of lease contracts between the owners and occupants through the mediation of the Catholic relief organization, Caritas (Caritas reimburses the rent to the occupants).

In at least 10 out of the more than 50 remaining illegal occupancy cases, occupants filed counterclaims for the reimbursement of investments made without the consent and knowledge of the owner. As a result, courts have made the physical repossession of property conditional on compensation for such investments in a number of cases. The Mission is aware of at least 3 verdicts ordering owners to reimburse the occupant for investments made in their property (ranging from 7,000 to 30,000 euros). The Mission has proposed amendments to the Code on Civil Procedure to prohibit counterclaims for investments in State-administered private property, when these investments were not agreed between owners and occupants.

The Government states that the remaining cases of illegal occupancy need to be resolved at the judicial level. The courts have played a rather marginal role in repossession thus far, mainly in cases where all other settlement proposals have failed.

2) Impact of repossession on sustainable return

The increased pace of property repossession, after almost nine years of so-called temporary use, does not necessarily result in increased return. Field reports suggest that only a small number of owners move directly into their properties after repossession, while the majority choose to sell their properties to the State or enter into lease agreements with the occupants.

A significant proportion of repossessed properties - around 20 per cent of field cases monitored by the Mission - continue to be looted by the occupants prior to their moving out, and are given back to the owners in uninhabitable condition. The removal of integral parts of the houses (such as doors, windows, electric and water installations) compels owners to prolong their displacement for at least several months after the physical repossession, until they can find a donor to provide humanitarian assistance. Although owners of looted and damaged properties are legally eligible for State assistance in the form of building material, their claims have not as yet been processed by the competent authorities. Many owners reported to the Mission that local Ministry officials discouraged them from applying for this remedy.

3) Pace of administrative and physical allocation of housing for the remaining cases and perspective on their resolution before the end of the year

Judging from current developments, it seems possible that the majority of the remaining 2,048 pending cases of occupied properties may be resolved by the end of the year (through physical repossession, sale and rent agreements). A significant number of houses may remain occupied, however, either because it will prove difficult for the Government to make sufficient housing available, or due to lengthy court proceedings against occupants who fail to respect administrative vacation orders issued by the Ministry. As a result, the Mission anticipates that property repossession will be completed in some municipalities only in mid-2005 (such as Knin, Vojnic, Sunja, Karlovac, Gracac, Obrovac, Benkovac).

The Government has committed itself to providing alternative housing for approximately 2,000 further eligible families. Administrative decisions on the allocation of housing have been issued in around half of these cases. These decisions will be implemented as alternative housing becomes available. The resolution of all repossession cases before the end of the

year will therefore require an additional increase in the purchase of houses by the State, as well as an acceleration in the delivery of building material to the respective beneficiaries. Regarding the construction of new housing, the allocation of building plots and building material is a relatively slow solution, since, based on Mission observations, 18 months elapse on average between the first delivery of building material and the completion of construction works by the beneficiary. The beneficiary (occupant) is then supposed to vacate the occupied property within a ninety day deadline.

The State construction of several settlements all over Croatia has been announced, but has only been partially initiated. Infrastructure and utility connection in many cases lags behind the actual construction works and tends to delay handover.

Despite the formal responsibility of the Ministry, the process of property repossession is significantly influenced by conditions at the municipal level, such as the availability of housing, the quality of the infrastructure, and the market price of residential properties (temporary occupants are in general provided with alternative housing in the same municipalities where they currently reside). In addition, the resolution of the most difficult cases (socially vulnerable families and individuals, one member families and so on) often depends on the interaction of different ministries and local self-government bodies.